
By: **Senators Hollinger and Teitelbaum**
Introduced and read first time: January 31, 2003
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law - Commercial Electronic Mail**

3 FOR the purpose of prohibiting a person from initiating, conspiring to initiate, or
4 assisting in the transmission of certain commercial electronic mail that does not
5 include certain characters in the subject line; prohibiting a person from selling,
6 giving, or otherwise distributing, or possessing with the intent to sell, give, or
7 distribute, certain software; establishing certain penalties; defining certain
8 terms; and generally relating to commercial electronic mail.

9 BY repealing and reenacting, with amendments,
10 Article - Commercial Law
11 Section 14-3001 through 14-3003
12 Annotated Code of Maryland
13 (2000 Replacement Volume and 2002 Supplement)

14 BY adding to
15 Article - Commercial Law
16 Section 14-3002.1
17 Annotated Code of Maryland
18 (2000 Replacement Volume and 2002 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article - Commercial Law**

22 14-3001.

23 (a) In this subtitle the following words have the meanings indicated.

24 (b) (1) "Commercial electronic mail" means electronic mail that advertises
25 real property, goods, or services for sale or lease.

1 (2) "Commercial electronic mail" does not include electronic mail to
2 which an interactive computer service provider has attached an advertisement in
3 exchange for free use of an electronic mail account.

4 (c) (1) "Interactive computer service provider" means an information
5 service, system, or access software provider that provides or enables computer access
6 by multiple users to a computer service.

7 (2) "Interactive computer service provider" includes a service or system
8 that provides access to the Internet and systems operated or services offered by a
9 library or educational institution.

10 (D) "UNSOLICITED COMMERCIAL ELECTRONIC MAIL" MEANS COMMERCIAL
11 ELECTRONIC MAIL THAT IS TRANSMITTED TO A RECIPIENT WHO:

12 (1) HAS NOT EXPRESSLY CONSENTED TO THE TRANSMISSION; OR

13 (2) DOES NOT HAVE A PREEXISTING BUSINESS OR PERSONAL
14 RELATIONSHIP WITH THE SENDER.

15 (E) "UNSOLICITED SEXUALLY EXPLICIT COMMERCIAL ELECTRONIC MAIL"
16 MEANS UNSOLICITED COMMERCIAL ELECTRONIC MAIL THAT CONTAINS A VISUAL
17 DEPICTION, IN ACTUAL OR SIMULATED FORM, OR AN EXPLICIT DESCRIPTION IN A
18 PREDOMINATELY SEXUAL CONTEXT, OF NUDDITY, HUMAN GENITALIA, OR ANY ACT OF
19 NATURAL OR UNNATURAL SEXUAL INTERCOURSE.

20 14-3002.

21 (a) This section does not apply to an interactive computer service provider or a
22 telecommunication utility to the extent that the interactive computer service provider
23 or the telecommunication utility merely handles, retransmits, or carries a
24 transmission of commercial electronic mail.

25 (b) A person may not initiate the transmission, conspire with another person
26 to initiate the transmission, or assist in the transmission of commercial electronic
27 mail that:

28 (1) Is from a computer in the State or is sent to an electronic mail
29 address that the sender knows or should have known is held by a resident of the
30 State; and

31 (2) (i) Uses a third party's Internet domain name or electronic mail
32 address without the permission of the third party;

33 (ii) Contains false or misleading information about the origin or the
34 transmission path of the commercial electronic mail; [or]

35 (iii) Contains false or misleading information in the subject line that
36 has the capacity, tendency, or effect of deceiving the recipient; OR

1 (IV) DOES NOT INCLUDE IN THE SUBJECT LINE:

2 1. FOR UNSOLICITED COMMERCIAL ELECTRONIC MAIL,
3 "ADV:" AS THE FIRST FOUR CHARACTERS; AND

4 2. FOR UNSOLICITED SEXUALLY EXPLICIT COMMERCIAL
5 ELECTRONIC MAIL, "ADV: ADULT" AS THE FIRST NINE CHARACTERS.

6 (c) A person is presumed to know that the intended recipient of commercial
7 electronic mail is a resident of the State if the information is available on request
8 from the registrant of the Internet domain name contained in the recipient's
9 electronic mail address.

10 (d) An interactive computer service provider:

11 (1) May block the receipt or transmission through its interactive
12 computer service of commercial electronic mail that it reasonably believes is or will be
13 sent in apparent violation of this section; and

14 (2) May not be held liable for an action under item (1) of this subsection
15 that is voluntarily taken in good faith.

16 14-3002.1.

17 A PERSON MAY NOT SELL, GIVE, OR OTHERWISE DISTRIBUTE, OR POSSESS WITH
18 THE INTENT TO SELL, GIVE, OR DISTRIBUTE, SOFTWARE THAT:

19 (1) IS PRIMARILY DESIGNED OR PRODUCED FOR THE PURPOSE OF
20 FACILITATING OR ENABLING THE FALSIFICATION OF COMMERCIAL ELECTRONIC
21 MAIL TRANSMISSION INFORMATION OR OTHER ROUTING INFORMATION;

22 (2) HAS ONLY A LIMITED COMMERCIAL SIGNIFICANT PURPOSE OR
23 USE OTHER THAN TO FACILITATE OR ENABLE THE FALSIFICATION OF COMMERCIAL
24 ELECTRONIC MAIL TRANSMISSION INFORMATION OR OTHER ROUTING
25 INFORMATION; OR

26 (3) IS MARKETED BY THE PERSON, OR BY ANOTHER PERSON ACTING IN
27 CONCERT WITH THE PERSON WITH THE PERSON'S KNOWLEDGE, FOR USE IN
28 FACILITATING OR ENABLING THE FALSIFICATION OF COMMERCIAL ELECTRONIC
29 MAIL TRANSMISSION INFORMATION OR OTHER ROUTING INFORMATION.

30 14-3003.

31 (A) [A] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A person
32 who violates this subtitle is liable for reasonable attorney's fees and for damages:

33 (1) To the recipient of commercial electronic mail, in an amount equal to
34 the greater of \$500 or the recipient's actual damages;

1 (2) To the third party without whose permission the third party's
2 Internet domain name or electronic mail address was used, in an amount equal to the
3 greater of \$500 or the third party's actual damages; and

4 (3) To an interactive computer service provider, in an amount equal to
5 the greater of \$1,000 or the interactive computer service provider's actual damages.

6 (B) A PERSON WHO VIOLATES § 14-3003(B)(2)(IV) OF THIS SUBTITLE IS LIABLE
7 TO THE RECIPIENT OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL OR
8 UNSOLICITED SEXUALLY EXPLICIT ELECTRONIC MAIL FOR:

9 (1) REASONABLE ATTORNEY'S FEES; AND

10 (2) DAMAGES IN AN AMOUNT EQUAL TO THE GREATER OF \$10 OR THE
11 RECIPIENT'S ACTUAL DAMAGES FOR EACH TRANSMISSION OF UNSOLICITED
12 COMMERCIAL ELECTRONIC MAIL OR UNSOLICITED SEXUALLY EXPLICIT
13 COMMERCIAL ELECTRONIC MAIL RECEIVED BY THE RECIPIENT.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2003.